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HUMAN RIGHTS COMMITTEE
Fifty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

PERU

1. The Committee continued its consideration of Peru's third periodic report (CCPR/C/83/Add.1 and HRI/CORE/1/Add.43/Rev.1) at its 1547th and 1548th meetings, on 31 October 1996 (CCPR/C/SR.1547 and 1548), and addressed questions left pending after the initial consideration of the report at its fifty-seventh session, at which urgent issues had been examined. In the light of its further consideration of the report, it adopted the following observations and recommendations at its 1555th meeting (fifty-eighth session), held on 6 November 1996:

A. Introduction

2. The Committee welcomes the State party's third periodic report and is gratified by the continuation of the dialogue initiated with the delegation. However, the Committee regrets that the report does not contain sufficient reliable information on current legal provisions in Peru relating to a number of the rights covered in the Covenant or on the actual observance of human rights.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee is aware that Peru has been affected by terrorist activities, internal disturbances and violence. In the Committee's view, although the State has both the right and the duty to adopt vigorous measures to protect its population against terrorism, such measures must not violate the rights protected by the Covenant.

C. Positive aspects

4. The Committee notes with satisfaction that the Constitutional Court and the Ombudsman's Office have commenced activities and that units specializing in constitutional matters and the rights of women have been set up within the Ombudsman's Office. It also takes a positive view of the establishment of the National Register of Detainees and Persons Sentenced to Custodial Sentences and the organization of training courses for lawyers and administrative personnel with the aim of improving the administration of justice.

5. The Committee also welcomes the establishment of the Standing Commission on the Rights of Women and of other organs designed to foster equality among men and women in Peru. It further notes the announcement of the establishment of the Ministry of Women and Human Development and expresses the hope that the Ministry will make a valuable contribution to ensuring that women in Peru fully enjoy the human rights enshrined in the Covenant. In the same connection, it appreciates Peru's ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

6. The Committee welcomes with satisfaction the State party's report on the establishment of offices to provide advice and care in cases of violence and abuse against children and adolescents and the programmes introduced to assist children as part of the measures to solve the problem of displaced persons. In this connection, the Committee commends the establishment of the National Technical Commission on Displaced Populations and the other measures being taken to solve the problems of displaced persons, and welcomes the fact that, according to the Government, 56 per cent of the peasant population have returned to their places of origin.

D. Principal subjects of concern

7. The Committee regrets that the constitutional status extended to the Covenant by Peru's 1979 Constitution has been substantially diminished, thereby reducing the protection previously enjoyed by individuals in Peru as regards the rights enshrined in the Covenant.

8. The Committee once again deplores the fact that Peru has ignored both the concerns expressed by the Committee in the observations adopted when it concluded its consideration of the first part of Peru's third periodic report and the suggestions and recommendations made in those same observations, arguing that Peru is entitled to give precedence to considerations of security or domestic policy over its obligations under the Covenant. The Committee considers that, in conformity with international law, article 1 of the Covenant does not authorize the State to adopt a new Constitution that may be incompatible with its other obligations under the Covenant. The Constitution is part of the legal order of the State and as such may not be invoked as grounds for exemption from compliance with an international obligation freely entered into by the State.

9. The Committee in particular deplores the fact that the recommendations relating to the amnesty laws (CCPR/C/79/Add.67, para. 20) have not been followed and that no effective remedy is available to allow the victims of human rights violations by State agents to claim compensation. It also regrets the lack of information on the fate of the recommendations made in

paragraphs 22, 23 and 26 and the failure to respond to the recommendation made in paragraph 24.

10. The Committee takes note of the measures adopted by Peru to pardon persons convicted of terrorism. Notwithstanding its satisfaction at the release of 69 persons, the Committee considers that the pardon does not provide full redress to the victims of trials conducted without regard for due process of law and repeats the recommendation made in paragraph 21 of its observations, which includes the need to establish an effective mechanism, at the initiative of the State, to revise all the convictions handed down by the military tribunals in treason and terrorism cases.

11. The Committee regrets the fact that Peru has not only failed to take measures in response to the recommendation made in paragraph 25 of the observations, but has on the contrary extended, only a few days before the second part of the report was considered, the system of "faceless judges". The Committee expresses its profound concern at this situation, which undermines the judicial system and will again lead to the conviction of innocent persons without a proper trial.

12. The Committee appreciates the information provided by the State on communications Nos. 201/1986, 203/1986, 263/1987 and 309/1988, which are still pending, but regrets that the State's efforts have not led to proper redress for the victims. At the same time, the Committee deplores the lack of information on the observance of Act No. 23.506, ordering immediate compliance with the Committee's observations through the procedure employed to enforce judgements handed down by national courts against the State.

13. The Committee regrets the lack of full and precise information on the legal status of women and on their enjoyment of the rights enshrined in the Covenant, particularly as regards their legal capacity, the frequency of violence and sexual abuse against female detainees or prisoners, legal and practical restrictions in the labour sphere and the impact of recent laws and programmes designed to solve the problem of violence against women.

14. The Committee expresses its concern about the existence of a number of provisions of the Civil Code that discriminate against women, such as the difference in the minimum age required for matrimony and the fact that single mothers aged under 16 lack legal capacity to recognize their children. This gives rise to problems of compatibility between Peruvian legislation and articles 3, 23, 24 and 26 of the Covenant.

15. The Committee notes with concern that the law still contains a provision exempting a rapist from punishment if he marries his victim and another which classifies rape as an offence prosecutable privately. The Committee is also concerned that abortion gives rise to a criminal penalty even if a woman is pregnant as a result of rape and that clandestine abortions are the main cause of maternal mortality. These provisions not only mean that women are subject to inhumane treatment but are possibly incompatible with articles 3, 6 and 7 of the Covenant.

16. The Committee notes with concern that when cases that might lead to a divorce are heard (physical or mental ill-treatment, serious injury and

dishonourable conduct), the law instructs judges to take into consideration the education, habits and conduct of both spouses, a requirement that might easily lead to discrimination against women from the lower socio-economic strata.

17. In the same connection, the Committee is concerned that in Peru socio-economic criteria are used to group convicted and unconvicted prisoners and deplores the lack of information on the exact significance of this policy, as well as the lack, in general, of detailed information on conditions of detention, to enable it to assess their compatibility with article 10 of the Covenant.

18. The Committee remains deeply concerned about the power of the police to decide to hold a person incommunicado for up to two weeks.

E. Suggestions and recommendations

19. The Committee recommends that the necessary legal measures should be taken to ensure compliance with the obligations to respect and guarantee the rights recognized in the Covenant, in conformity with its article 2, paragraph 1.

20. The Committee reiterates the need for Peru to consider adopting effective measures in the fields referred to by the recommendations made in paragraphs 21, 22, 23, 24, 25 and 26 of the observations made on completion of the consideration of the first part of the State party's third periodic report.

21. Regarding communications Nos. 202/1986, 203/1986, 263/1987 and 309/1988, the Committee again draws Peru's attention to the fact that, by acceding to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, in accordance with the provisions of article 2 of the Covenant, the State party undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and applicable remedy if a violation is found to have occurred; accordingly, the Committee requests the State to submit to it within 90 days information on the measures adopted to implement the Committee's decisions.

22. The Committee recommends that the provisions of the Civil and Penal Codes should be revised in the light of the obligations laid down in the Covenant, and in particular in its articles 3 and 26. Peru must ensure that laws relating to rape, sexual abuse and violence against women provide women with effective protection and must take the necessary measures to ensure that women do not risk their life because of the existence of restrictive legal provisions on abortion.

23. The Committee recommends that the Government should adopt the legislation necessary to allow political parties to operate effectively and democratically and fully to implement the rights protected by articles 22 and 25 of the Covenant.

24. The Committee recommends that education programmes should be established for children and for the community in order to develop a thorough understanding of the principles of respect for human rights and of tolerance and of the role these principles play in the development of a sound and stable democracy.

25. The Committee hopes that, in its next periodic report, Peru will include information on the progress made to extend to women in Peru full enjoyment of the rights enshrined in the Covenant, particularly in the spheres with which the Committee is concerned (see paras. 13, 14, 15 and 16), together with detailed information on how it is complying with the provisions of article 10 of the Covenant.